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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,580	10/03/2006	Antonio Carlos Teixeira Alvares	06290/0204122-US0	9899
7278	7590	06/10/2010	EXAMINER	
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			ELOSHWAY, NIKI MARINA	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			06/10/2010 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/570,580

**Applicant(s)**

ALVARES ET AL.

**Examiner**

NIKI M. ELOSHWAY

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 6, 7 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coyle et al. (U.S. 2,535,840) in view of La Croce et al. (U.S. 3,814,277). Coyle et al. teach a can for bulk products, comprising a tubular body 1 in metallic sheet, having at least one peripheral lateral wall, shown at lead line 1 in figure 1, and one annular upper wall 2 presenting an external edge 3 affixed to the peripheral lateral wall by a double seam (col. 2 lines 5-7). The annular upper wall also has an internal face turned to the interior of the tubular body 1 and an internal edge at 9 and 10 defining an opening. The lid is element 11 and is removably fitted and retained in the opening of the can, in order to close it. The annular upper wall has any point of its internal face disposed at a height, measured in the interior of the tubular body, at minimum equal to the height of another point of said internal face disposed in a radially external manner, aligned and adjacent in relation to said point, as shown in figure 5. The points of the annular upper wall which are circumferentially aligned are contained in a plane orthogonal to the central axis. The one portion of the upper annular wall which progressively and continuously increases is shown

at lead line 4. The internal radial extension portion adjacent the opening is shown at lead line 7. The upwardly and outwardly bent internal edge is shown at lead line 9.

Coyle et al. do not teach that the internal radial extension portion and the external radial extension portion are interconnected via a sloped portion. Coyle et al. have a vertically extending intermediate member at lead lines 5 and 6. La Croce et al. teach that it is known to provide an annular upper wall with a sloped portion between the internal and external extension portions (see elements 18 and 20 which are both sloped). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Coyle et al. without the vertically extending portion at lead line 5, as taught by La Croce et al., in order to reduce the height and material costs of the annular upper wall, and since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184.

Regarding claims 6, 7 and 13, Coyle et al. teach the cross section of the edge at 9 is defined by at least one portion of an arc of a circle with the center in a plane orthogonal to the axis of the tubular body and medially sectioned by the plane. The lid has a peripheral lateral wall 12-15 externally provided with a circumferential cradle at 12 and 15 presenting a cross section in the form of an arc of a circle, which is shown in figure 3 between lead lines 9 and 15 and within which is fitted the portion in the form of an arc of a circle the circumferential rib 9. Coyle et al. do not appear to teach that the upper section of an external peripheral flange is seated on the circumferential rib. It appears to be slightly vertically spaced from the circumferential rib. La Croce et al. teach that it is known to provide a lid which is seated on the circumferential rib (see element 36 in figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Coyle et al. with the external peripheral flange being seated on the circumferential rib, as taught by La Croce et al., in order to provide a tighter seal between the lid and the annular wall.

Art Unit: 3781

4. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coyle et al. (U.S. 2,535,840) in view of La Croce et al. (U.S. 3,814,277), as applied to claim 6 above, and further in view of von Holdt (U.S. 5,842,593). Coyle et al. do not teach the radial extensions, breakable connections and handles. Von Holdt teaches that it is known to provide a lid with radial extensions and breakable connections which secure handles to the lid (see figures 6-8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Coyle et al. with handles and handle attaching means, which include the radial extensions and breakable connections, as taught by von Holdt, in order to allow easy carrying of the container.

#### ***Response to Arguments***

5. Applicant's amendment filed March 2, 2010 is sufficient to overcome the rejection under 35 U.S.C. 112, second paragraph, applied in the previous Office Action.
6. Applicant's arguments filed March 2, 2010 have been fully considered but they are not persuasive. The primary reference of Coyle et al. has been modified by La Croce et al. and meets the limitations of the amended claims.
7. The new grounds of rejection were necessitated by the amendment filed March 2, 2010.

#### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

Art Unit: 3781

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/  
Supervisory Patent Examiner, Art Unit 3781

/Niki M. Eloshway/  
Niki M. Eloshway  
Examiner  
Art Unit 3781

NME